UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,021	01/16/2001	Steven Lurie	76705-201201/US	8048

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EXAMINER
GAUTHIER, GERALD

ART UNIT	PAPER NUMBER
2645	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/764,021	LURIE, STEVEN
	Examiner	Art Unit	
	Gerald Gauthier	2645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>09 January 2006</u>.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>See Continuation Sheet</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1,3-8,13,17-26,32-34,37,40,41,43-46,49,50,53,54,57-66,69,70,72,73,77,80,81,83-86,89,90,93,94,97 and 99-103* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 1,3-8,13,17-26,32-34,37,40,41,43-46,49,50,53,54,57-66,69,70,72,73,77,80,81,83-86,89,90,93,94,97 and 99-103.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January

9, 2006 has been entered.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3.   **Claim(s) 1, 3-8, 13, 17-26, 32-34, 37, 40-41, 43-46, 49-50, 53-54, 57-66, 69-70,**

72-73, 77, 80-81, 83-86, 89-90, 93-94, 97 and 99-103 are rejected under 35

U.S.C. 102(b) as being anticipated by Montenegro et al. (US 5,694,537).

Regarding **claim(s) 1, 37, 57 and 77**, Montenegro discloses a system (FIG. 1

and column 1, lines 7-10), comprising:

a first logic unit to provide a list of service providers via a communication connection, indicating a real-time availability and a rate of each at least one service provider of the service providers (column 7, lines 38-48);

a second logic unit to receive from a user a selection of a service provider from the list of service providers (column 8, lines 10-17);

a third logic unit to attempt to establish a real-time communications connection to the selected service provider in response to the selection (column 10, lines 50-54); and

a fourth logic unit to search a database for an alternate service provider in response to a failed attempt to connect the selected service provider and the user, and to offer the user an option of connecting with the alternate service provider (column 9, lines 57-62).

Regarding **claim(s) 3, 18, 34 and 83**, Montenegro discloses a system, wherein, in response to a connection established between the selected service provider and the user, the fourth logic unit presents the alternate service provider after communication is completed with the selected service provider (column 8, lines 18-31).

Regarding **claim(s) 4, 24, 44, 58 and 84**, Montenegro discloses a system, wherein the selected service provider is an information provider (column 8, lines 18-31).

Regarding **claim(s) 5, 25, 45, 59 and 85**, Montenegro discloses a system,

wherein information of the information provider is provided as a recorded transmission

(column 8, lines 18-31).

Regarding **claim(s) 6, 26, 46, 60 and 86**, Montenegro discloses a system,

wherein information of the information provider is provided as a communication with a

live person (column 8, lines 46-50).

Regarding **claim(s) 7, 19, 40 and 80**, Montenegro discloses a system, wherein

the selection is received over a telephone connection (column 8, lines 18-31).

Regarding **claim(s) 8, 20, 41 and 81**, Montenegro discloses a system, wherein

the selection is received over the communication connection, which includes an Internet

connection (column 8, lines 18-31).

Regarding **claim(s) 13, 32, 33 and 61**, Montenegro discloses a system, wherein

a set of criteria to search the database for the alternative service provider is established

by a system administrator of the system (column 7, lines 38-48).

Regarding **claim(s) 17 and 97**, Montenegro discloses all the limitations of

claim(s) 17 and 97 as stated in **claim(s) 1**'s rejection and furthermore Montenegro

discloses a communications interface (45 on FIG. 3); and

a controller computer linked with the communications interface (49 on FIG. 3).

Regarding **claim(s) 21**, Montenegro discloses a system, wherein the first logic unit provides the list of providers to the user via a web page (column 8, lines 18-31).

Regarding **claim(s) 22**, Montenegro discloses a system, wherein the second logic unit receives the user's selection via a web page (column 8, lines 18-31).

Regarding **claim(s) 23**, Montenegro discloses a system, wherein the third logic unit provides a list of the alternate service providers to the user via a web page (column 8, lines 18-31).

Regarding **claim(s) 41**, Montenegro discloses a method, in response to a connection established between the selected service provider and the user, providing the option to connect to the alternate service provider after the communications ends between the user and the selected service provider ends (column 8, lines 18-31).

Regarding **claim(s) 49, 69 and 89**, Montenegro discloses a method, wherein the user can determine the range (column 8, lines 18-31).

Regarding **claim(s) 50, 70 and 90**, Montenegro discloses a method, wherein a system administrator can determine the range (column 8, lines 18-31).

Regarding **claim(s) 53, 72 and 93**, Montenegro discloses a method, wherein a

system administrator can establish the criteria by which a match is determined (column

8, lines 18-31).

Regarding **claim(s) 54, 73 and 94**, Montenegro discloses a method, wherein the

user can establish the criteria by which a match is determined (column 8, lines 18-31).

Regarding **claim(s) 62**, Montenegro discloses a method, wherein the selected

service provider receives a pre-established percentage of any commission paid to the

alternate service provider (column 8, lines 46-50).

Regarding **claim(s) 63**, Montenegro discloses a method, wherein the selected

service provider is given an option to provide access to the database when the selected

service provider creates an initial listing (column 8, lines 46-50).

Regarding **claim(s) 64**, Montenegro discloses a method, wherein the option

defaults to allow access to the database (column 8, lines 46-50).

Regarding **claim(s) 65**, Montenegro discloses a method, wherein the selected

service provider is notified of a missed connection with the user (column 8, lines 46-50).

Regarding **claim(s) 66**, Montenegro discloses a method, wherein the notice comes in a form of an e-mail (column 8, lines 32-46).

Regarding **claim(s) 99**, Montenegro discloses a system, wherein the user can specify a method by which the selected service provider is reconnected with the user (column 8, lines 46-50).

Regarding **claim(s) 100**, Montenegro discloses a system, wherein the user can set a time limit on when to reconnect to the selected service provider (column 8, lines 46-50).

Regarding **claim(s) 101**, Montenegro discloses a system, wherein the system is remote to the user (column 8, lines 46-50).

Regarding **claim(s) 102**, Montenegro discloses a system, wherein the database is searched for the alternative service provider based at least on reliability factor indicating a ratio of successful attempts to connect the alternate service provider and previous users to total attempts to connect the alternate service provider and previous users (column 8, lines 46-50).

Regarding **claim(s) 103**, Montenegro discloses a system, wherein the database is searched for the alternative service provider based at least on one or more of: rate

within a predetermined range of a rate of the selected service provider, and subject

matter (column 8, lines 46-50).

Response to Arguments

4.   Applicant's arguments with respect to **claim(s) 1, 3-8, 13, 17-26, 32-34, 37, 40-41, 43-46, 49-50, 53-54, 57-66, 69-70, 72-73, 77, 80-81, 83-86, 89-90, 93-94, 97 and 99-103** have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Gerald Gauthier whose telephone number is (571) 272-

7539. The examiner can normally be reached on 8:00 AM to 4:30 PM.

      If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

GERALD GAUTHIER
PATENT EXAMINER

g.g.
February 20, 2006